

9 FAM 40.21(a) Crimes involving moral turpitude and controlled substance violators.

(TL VISA-204; 05-15-2000)

(a) Crimes involving moral turpitude—

(1) Acts must constitute a crime under criminal law of jurisdiction where they occurred

(TL VISA-204; 05-15-2000)

A consular officer may make a finding of ineligibility under INA 212(a)(2)(A)(i)(I) based upon an alien's admission of the commission of acts which constitute the essential elements of a crime involving moral turpitude, only if the acts constitute a crime under the criminal law of the jurisdiction where they occurred. However, a consular officer must base a determination that a crime involves moral turpitude upon the moral standards generally prevailing in the United States.

[Amended by 64 FR 55417.]

(2) Conviction for crime committed under age 18.

(TL VISA-204; 05-15-2000)

(i) An alien will not be ineligible to receive a visa under INA 212(a)(2)(A)(i)(I) by reason of any offense committed:

(A) prior to the alien's fifteenth birthday, or

(B) between the alien's fifteenth and eighteenth birthdays unless such alien was tried and convicted as an adult for a felony involving violence as defined in section 1(1) and section 16 of Title 18 of the United States Code.

[Amended by 64 FR 55417.]

(ii) An alien tried and convicted as an adult for a violent felony offense, as so defined, committed after having attained the age of fifteen years, will be subject to the provisions of INA 212(a)(2)(A)(i)(I) regardless of whether at the time of conviction juvenile courts existed within the convicting jurisdiction.

[Amended by 64 FR 55417.]

(3) Two or more crimes committed under age 18.

(TL:VISA 105; 02-03-1995)

An alien convicted of a crime involving moral turpitude or admitting the commission of acts which constitute the essential elements of a crime and who has committed an additional crime involving moral turpitude is ineligible under INA 212(a)(2)(A)(i)(I), even though the crimes were committed while the alien was under the age of 18 years.

[Added 56 FR 30424; Jul. 2, 1991.]

(4) Conviction in absentia.

(TL:VISA 105; 02-03-1995)

A conviction in absentia of a crime involving moral turpitude does not constitute a conviction within the meaning of INA 212(a)(2)(A)(i)(I).

[Added 56 FR 30424; Jul. 2, 1991.]

(5) Effect of pardon by appropriate U.S. authorities/foreign states.

(TL:VISA 105; 02-03-1995)

An alien shall not be considered ineligible under INA 212(a)(2)(A)(i)(I) by reason of a conviction of a crime involving moral turpitude for which a full and unconditional pardon has been granted by the President of the United States, by the Governor of a State of the United States, by the former High Commissioner for Germany acting pursuant to Executive Order 10062, or by the United States Ambassador to the Federal Republic of Germany acting pursuant to Executive Order 10608. A legislative pardon or a pardon, amnesty, expungement of penal record or any other act of clemency granted by a foreign state shall not serve to remove a ground of ineligibility under INA 212(a)(2)(A)(i)(I).

[Added 56 FR 30424; Jul. 2, 1991.]

(6) Political offenses.

(TL:VISA 105; 02-03-1995)

The term "purely political offense," as used in INA 212(a)(2)(A)(i)(I), includes offenses that resulted in convictions obviously based on fabricated charges or predicated upon repressive measures against racial, religious, or political minorities.

[Added 56 FR 30424; Jul. 2, 1991.]

(7) Waiver of ineligibility - INA 212(h).

(TL:VISA 105; 02-03-1995)

If an immigrant visa applicant is ineligible under INA 212(a)(2)(A)(i)(I) but is qualified to seek the benefits of INA 212(h), the consular officer shall inform the alien of the procedure for applying to INS for relief under that provision of law. A visa may not be issued to the alien until the consular officer has received notification from INS of the approval of the alien's application under INA 212(h).

[Added 56 FR 30424; Jul. 2, 1991.]

9 FAM 40.21a Related Statutory Provisions

INA 212(a)(2) Criminal and Related Grounds

(TL:VISA-105; 02-03-1995)

(A) Conviction of Certain Crimes

(i) IN GENERAL.—Except as provided in clause (ii), any alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of—

(I) a crime involving moral turpitude (other than a purely political offense), or an attempt or conspiracy to create such a crime, or

(II)

(ii) EXCEPTION.—Clause (i)(I) shall not apply to an alien who committed only one crime if—

(I) the crime was committed when the alien was under 18 years of age, and the crime was committed (and the alien released from any confinement to a prison or correctional institution imposed for the crime) more than 5 years before the date of application for a visa or other documentation and the date of application for admission to the United States, or

(II) the maximum penalty possible for the crime of which the alien was convicted (or which the alien admits having committed or of which the acts that the alien admits having committed constituted the essential elements) did not exceed imprisonment for one year and, if the alien was convicted of such crime, the alien was not sentenced to a term of imprisonment in excess of 6 months (regardless of the extent to which the sentence was ultimately executed).

INA 212(h)

(TL:VISA-159; 12-20-1996)

The Attorney General may, in his discretion, waive the application of subparagraphs (A)(i)(I), B, D, and E of subsection (a)(2) and subparagraph (A)(i)(II) of such subsection insofar as it relates to a single offense of simple possession of 30 grams or less of marijuana if—

(1)(A) in the case of any immigrant it is established to the satisfaction of the Attorney General that—

(i) the alien is inadmissible only under subparagraph (D)(i) or (D)(ii) of such subsection or the activities for which the alien is inadmissible occurred more than 15 years before the date of the alien's application for a visa, admission, or adjustment of status,

(ii) the admission to the United States of such alien would not be contrary to the national welfare, safety, or security of the United States, and

(iii) the alien has been rehabilitated; or

(B) in the case of an immigrant who is the spouse, parent, son, or daughter of a citizen of the United States or an alien lawfully admitted for permanent residence if it is established to the satisfaction of the Attorney General that the alien's denial of admission would result in extreme hardship to the United States citizen or lawfully resident spouse, parent, son, or daughter of such alien; and

(2) the Attorney General, in his discretion and pursuant to such terms, conditions and procedures as he may by regulations prescribe, has consented to the alien's applying or reapplying for a visa, for admission to the United States, or adjustment of status.

No waiver shall be provided under this subsection in the case of an alien who has been convicted of, (or who has admitted committing acts that constitute) murder or criminal acts involving torture or an attempt or conspiracy to commit murder or a criminal act involving torture. No waiver shall be granted under this subsection in the case of an alien who has previously been admitted to the United States as an alien lawfully admitted for permanent residence if either since the date of such admission the alien has been convicted of an aggravated felony or the alien has not lawfully resided continuously in the United States for a period of not less than 7 years immediately preceding the date of initiation of proceedings to remove the alien from the United States. No court shall have jurisdiction to review a decision of the Attorney General to grant or deny a waiver under this subsection.

[Amended by sec. 348(a) of Pub. L. 104-208, Sept. 30, 1996.]